Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

JOSE J. HOYOS

Petitioner

vs.

UNITED STATES OF AMERICA, DEPARTMENT OF VETERANS AFFAIRS, et al,.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Jose J. Hoyos
Plaintiff
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2311

QUESTIONS PRESENTED

1. Whether the moving party, on a Motion for Summary under Rule 56 of the Federal Rules of Civil Procedures, must support its Motion with some evidence even though the opposing party has admissible evidence with which to support its claim.

2. Whether Rule 56 of the Federal Rules of Civil Pro. permits a party to oppose a Motion for Summary Judgment with admissible evidence. Where the litigant was denied its due process right to a fair trial.

3. Whether the lower federal courts posses inherent judicial power to create their own rules for evidence which: (a) exceed those enumerated by Congress in Fed. R. Evid. 402, (b) bypass the procedural safeguard for evidence rulemaking mandated by Congress in 28 U.S.C. §§ 2071-2071, and (c) effect substantive revision of rights granted parties under federal law., in Federal Rules of Evidence enacted by Congress in 1975 eliminated the judge-make "general acceptance".

4. Petitioner will be bar from filing any type of law suit in the District Court, even if Petitioner has a vital claim before the District Court, in direct violation of the Constitution of the United States.

PARTIES

The parties to the proceeding in the United States Court of Appeals for the Southern District of Florida, (No. 95 -2256) were Jose J. Hoyos, individually and on behalf of all other persons similarly situated, Petitioner.

Respondents, Thomas Doherty, Jesse Brown, Wayne Johnson, Juliemer Santiago, Gregory Rhodes, Robert M. Clark, Diane L. Nealy, Arnold Berkowitz, Catherine Byrd, Dr. Anthony Soldo, Larry Brinkman, United States of America Department of Veterans Affairs, individuals and their officials capacity as employees, servant and agents of the Miami Veterans Affairs Medical Center, VA Hospital enterprise, as an agent of the United States Government.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

JOSE J. HOYOS,
Petitioner,

-v-

UNITED STATES OF AMERICA, DEPARTMENT OF VETERANS AFFAIRS, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE TO THE UNITED STATES COURT OF APPEAL'S FOR THE THE ELEVENTH CIRCUIT

DECISION BELOW

The opinion of the Court of Appeals is not published. The opinion of the district court can be found Civ. No. 95-2256 and was entered January 27, 1998. (App. B).

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on March 25, 1999, in denied for Petition Rehearing En Banc (App. C).

The Court of Appeals denied a timely petition for hearing and suggestion for rehearing En Banc filed by petitioner on March 25, 1999.

This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTION STATUTORY PROVISION AND RULES INVOLVED

This case involves Rule 56 of the Federal Rules of Civil Procedures, Fed. R. Civ. P. (c), provides in pertaining part:

The Supreme Court in Celotex Corporation v. Catrett, 477 U.S. 317 322, 323, 106 S.Ct. 2548, 2552, 91 L. Ed 2d. 265 (1986), set forth the function of a motion for summary judgment.

In our views, the plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to established the existence of an element essential to that party's case, and on which that party will bear the burden of proof at an essential element of the nonmoving party's case necessarily renders all others facts immaterial.

Evidence Inadmissible

All relevant evidence is admissible, except as other wise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

RULE 702 of the Federal Rules of Evidence provides:

Rule 702. Testimony by Experts
If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in form of an opinion or otherwise.

28 U.S.C. § 2071 (1988) provides, in relevant part:

§ 2071. Rule-making power generally
(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribe under section 2072 of this title.
(b) Any rule prescribe by a court, other that the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court may and shall have such effect on pending proceedings as the prescribing court may order.

28 U.S.C. § 2072 (1988) provides, in relevant part:

§ 2072. Rules of procedure and evidence; power to prescribe. (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.
(b) Such rules shall not abridge, enlarge or modify any substantive rights. All laws in conflict with such rules shall be of no further force and effect after such rules have taken effect.

The Seventh Amendment to the United States Constitution provides: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

Proceeding In The United States District Court

The fundamental question in this case is whether a litigant is entitle to relief from Summary Judgment. September 13, 1995, Petitioner acting pro-se, filed a complaint with the United States District Court for the Southern District of Florida, against the Department of Veterans Affairs, with direct discrimination against Petitioner, in which Petitioner filed numerous complaints of charges with EEOC, Grievances, Unfair Labor Charges, and Petitioner ended up in the crisis center. The complaint was based on discrimination and in violation of abridge Petitioner First, Fourth Amendment, and the Fourteenth Amendment rights.

Respondent (Veterans Hospital) allege that Petitioner amended his complaint on a letter dated October 27, 1995. Respondent allege that Petitioner state a cause of action under the Freedom of Information Act, 5 U.S.C. § 552, dropping his employment claim based on the Petitioner letter.

Pursuant to the local rules of the United States District Court:

Rule 15.1 Form of a motion to amend its supporting document. A party who moves to amend a pleading shall attache the original of the amended to the motion. Any amendment to a pleading, whether_ file as a matter of course of upon a successful motion to amend, must, except by leave of court, reproduce the entire pleading as when a motion to amend is granted, the amend pleading shall be filed and served forth with. A failure to comply with the rule is not ground for denial of the motion.

The Petitioner letter did not state a motion to amend, and was not notarize by Petitioner, and the original complaint was not attached to the letter of Petitioner. The Petitioner letter was not sent to the District Court, and was not in anyway intended to amend his complaint.

On February 15, 1996, the Respondent field an answer to the allege amended complaint, and a motion for substitution and dismissal. On March 29, 1996, Respondent filed a Motion for Summary Judgment, including (with incorporated memorandum), and a statement of material facts and Memorandum point and Authorities. On the affidavit of Mr. Anthony Evans filed March 28, 1996 was made to the best of his knowledge information and belief, and should be based on personal knowledge. Federal Rules of Civil Procedure 56, n at 224 page 190.

Petitioner respond to Respondent on Motion for Summary Judgment in opposing and Petitioner filed Motion to Strike (R3:108,113,116,117),(R4:139),(R6:239),(R7:254), Respondent Motion for Summary Judgment. Petitioner amend submitted exhibits of motion to strike Summary Judgment (R3:117), Petitioner requested to amend complaint (R3:109), Petitioner filed a protective order for Summary Judgment (R5:152). District Court denied all request of Petitioner which reflects on the docket sheet. Petitioner submitted interrogatories to Respondent and it was denied by the District Court. On January 6, 1997, (R6:215) Petitioner filed a memorandum for Summary Judgment and reconsideration to the District Court. Respondent depose Petitioner, Petitioner submitted the deposition to defeat Respondent Motion for Summary Judgment, and it was denied the District Court. Petitioner was not given the (10) days notice of the Summary Judgment. Here at hand, Petitioner was denied all of his request made to the District Court, and knowing that Petitioner has a claim to proceed to trial, which also resulted in a miscarriage of justice.

On January 27, 1998, the District Court, ruling on the Motion for Summary Judgment, granted Respondent (VA Hospital) Motion for Summary Judgment holding that there was showing that Petitioner (Jose Hoyos) had filed his action based on the Freedom of information Act, 5 U.S.C. 552 (a) (b) in deciding that there is no genuine dispute exist as to any material fact in favor to Petitioner. On an order dated February 6, 1998, from the District Court, Petitioner is prohibited from filing any further papers in this court without a permission of a United States District Judge. The District Court denied Petitioner to amend his complaint.

On February 10, 1998, Petitioner filed a Notice of Appeal with the clerk of the United States District Court, Southern District of Florida, appealing the Order granting Summary Judgment in favor of Respondent (VA Hospital). Petitioner challenged all of the Orders of the District Court, and Petitioner was denied all of his request to the District Court, knowing that Petitioner had a vital claim.

On Appeal, United States District court, Southern District of Florida, holding that Petitioner letter dated October 27, 1995 was admitted and was not defective on the face, rendering inappropriate the granting of Summary Judgment on the record as it stood before the District Court. Thus the District Court did not reach the evidentiary issue (App. D).

The Court determined that Respondent merely pointed to Petitioner inability to produce evidence to support his claim, and the Petitioner offer no affidavit, declarations or evidence of any sort to support its Motion. Thus, the Court did not held that Petitioner need to come forward with evidence to opposed Respondent motions for Summary Judgment.

REASON FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULING ON THE ESSENTIAL DUE PROCESS RIGHT OF A LITIGANT TO A COMPETENT AND IMPARTIAL TRIER OF FACTS

The Petitioner petition for writ of certiorari should be granted because the opinion conflicts with this Court's important prior ruling on a litigant's fundamental due process right to a fair trial. Further, the majority opinion contracts established case law of this Court and Appeals Court in allowing a party to oppose a summary judgment motion with admissible evidence. The Eleventh Circuit's decision below stretches the concept of inherent judicial power, well beyond the breaking point trampling over Federal Rule Evidence, 402. In so doing, the decision bypass that procedural safeguard for evidence rulemaking set forth by Congress in 28 U.S.C. §§ 2071-2072. The power of the federal court--including even this Court to prescribe rules of procedure and evidence for federal court's exist only in the absence of relevant Act of Congress. Palmer v. United States, 360 U.S. 343, 353 n. 11 (1959).

All relevant evidence is admissible, except as other wise provided. 1. by the Constitution of the United States, 2. by Act of Congress, 3. by these rules or 4. by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

ARGUMENT

The Eleventh Circuit in Fitzpatrick v. City of Atlanta, 2 F.3d 1112 1116-1117 (11th Cir. 1993), addressed with specificity, Plaintiff's burden as the non-movant for summary judgment on issues for which Plaintiff bears the burden of proof at trial:

> For issues on which the non-movant would bear the burden of proof at trial, the means of rebuttal available to the non-movant vary depending on whether the movant put on evidence affirmatively negating the material fact or instead demonstrated an absence of evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated. Where the movant did the latter, the non-movant must respond in one of two ways: First, he or she may show that the record in fact contains supporting evidence, sufficient to withstand a direct verdict motion, which was "overlooked or ignored" by the moving party, who has thus failed to meet the initial burden of showing an absence of evidence. Celox, 477 U.S. at 332, 106 S.Ct. 2557 (Brennan, J., dissenting). Second, he or she may come forward with additional evidence sufficient to withstand a direct verdict motion at trial based on the alleged evidentiary deficiency.

A Court may not enter summary judgment sua sponte without providing a minium of 10 days' to the parties are required by the Federal Rules of Civil Procedure. 6 Moore's Federal Practice ¶56.10. According to the majority opinion in this case, however, summary judgment would not be proper in Bald Mountain Park v. Oliver, 863 F.2d 1560 (11th Cir. 1989); WSB-TV v. Lee, 842 F.2d 1266, 1269 (11th Cir. 1988); Rollins v. TechSouth, Inc., 833 F.2d 1531, (11th Cir. 1987), unless the moving party produced some evidence to support its position.

In addition, the First Circuit in Lipsett v. University of Puerto Rico, 864 F.2d 881 (1st Cir. 1988); Knight v. U.S. Fire Insurance Co., Commissioners, 834 F.2d (2d Cir. 1987). The majority holds that a party must support a motion for summary judgment with "some evidence". In the Third Circuit in Williams v. Borough of West Chester, Pa., 891 F.2d 468 (3rd Cir. 1989); Yoash v. McLean Contracting Company, Inc., 907 F.2d 1481 (4th Cir. 1990); Ballinger v. North Carolina Agricultural., 815 F.2d 1001 (4th Cir. 1987). This requirements places an insurmountable burden on the moving party, if as in the present case, a material fact is plainly undemonstrable. Rule 56(b) of the Federal Rules of Civil Procedure permits a party to "move with or without supporting affidavits for a summary judgment".

The Fifth Circuit has stated its standard for summary Judgment in Washington v. Armostrong World Industries, Inc., 839 F.2d 1121 (5th Cir. 1988); the movement must present more than a metaphysical doubt about the material facts. Furthermore, under Rule 56 (c) the moving party is not required to make an evidentiary showing, and, pleadings. 6 J. Moore, Moore's Federal Practice ¶56[1.[2] at 209 (1985). In the Sixth Circuit in Street v. J.C. Brandford & Co., 866 F.2d 1472 (6th Cir. 1989); which states that the movement must meet the initial burden of showing "the absence of the genuine of material fact" as to an essential element of the nonmovant's case, after having sufficient time for discovery. Beard v. Whitley County REMC, 840 F.2d 405 (7th Cir. 1988) City of Mt. Pleasant, Iowa v. Associated Electric Cooperation, Inc., 838 F.2d 268 (8th Cir. 1988).

The District Court, must determine precisely what evidentiary materials are before it. A court generally should not rely on unsworn or unauthenticated documents in determined a summary jugdment motion, Macklin v. Butler, 553 F.2d 525, 528, (7th Cir. 1977), but may do so in the absence of objection. Townsend v. Columbia Operation, 667 F.2d 844, 849 (9th Cir. 1982). To be admissible, documents must be authenticated by and attached to an affidavit that meets the requirements of Rule 56 (e) and the affiant must be a person through the exhibit could be admitted into evidence. Petitioner object to the letter that was not made under oath. 10 A C. Wrigh, A. Miller and M. Kane, Federal Practice and Procedure § 2722 (2d 1983). (App. D).

Respondent argues that Petitioner letter dated October 27, 1995 was admitted as amended complaint. More importantly, Petitioner objected to the letter which appear in the court's docket sheet as (R3:108,116); (r6:239). Letters are not among the specific materials listed in Rule 56, and the Petitioners letters is admissible hearsay. It was not made under oath, and does not purport to be based on personal knowledge. The letter does not fall under Fed. R. Evid. 803(6). The letter was written to respond to inquires that were made in the course of this litigation. Palmer v. Hoffman, 318 U.S. 109, 111-15, 63 S.Ct. 477, 479-81, 87 L.Ed. 645 (1943). Summary Judgment should not be granted until Petitioner had adequate time for discovery. Snook v. Trust Co., of Ga Bank of Savannah, N.A., 859 F.2d 965 (11th Cir. 1988).

If party chooses to untilize an affidavit in connection with summary judgment motion, the affidavit must be based on personal knowledge. "6 J. Moore, Moore's Federal Practice ¶56.24[1]. Affidavit must contain evidence that would be admissible at trial.

THE PETITION SHOULD BE GRANTED BECAUSE THE ORDER OF OF THE APPEALS COURT BELOW DIRECT CONFLICT WITH THIS COURT'S ON PRIOR RULINGS ON THE CRUCIAL ROLE OF A DISTRICT COURT JUDGE AS A TRIER OF FACT

In the order below, the Eleventh Circuit implies that Petitioner have suffered no prejudice because, even if Judge Joan A. Lenard contradicts the Supreme Court cases, Matsushita, Liberty, Lobby, and Celotex, handed down in 1986, in which it was affirmed by all competent court's of appeals. (App. B). By doing so, the District Court, failed to acknowledge the Supreme Court decisions, as well as the Eleventh Circuit which failed to abide the Supreme Court of the United States. (App. A). This Court outlined the nature and rationale underlying this limited standard of review in Anderson, Liberty, Matsushita, there, this Court explained that "the rationale for summary judgment of the finder of facts, is not limited to the superiority of the trial judge's position to make a determinations of credibility. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1698, 26 L.Ed.2d 142 (1970). "Its not part of the court's function, when deciding a motions for summary judgment, to decide issues of material fact, but rather decide whether such issues exist to be tried. The Court must avoid weighing conflicting evidence or making credibility determinations." Citing Anderson v. Liberty. Thus, the majority's opinion elevates unsupported speculation over this Court's ruling that, to avoid summary judgment, a plaintiff" must do more that simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586.

It eviscerates that requirements that a plaintiff come forward with "more persuasive evidence" when, as here, a claim makes no economic sense. Indeed, the analysis evidence at all, even when their claims are contrary to sound, indeed admitted, economic logic. Respondent failed to come forward with evidence to defeat Petitioner Summary Judgment, and Respondent relied on Petitioner letter.

The Court of appeals for the Eleventh Circuit, relied heavily on Judge, Joan A. Lenard, District Judge, on the Motion for Summary Judgment and expertise as the trier of fact. By implying otherwise, the Eleventh Circuit stating that Petitioner frivolously sued just about everyone, and express to cut-off Petitioner access to court in the future, regardless if Petitioner would have a claim in the future, in violating Petitioner Fourteenth Amendment Rights. Due Process is not serviced for one litigant simply by preventing others from suffering similar violations of their due process rights in the future. For this reasons, as well, Petitioner for writ should be granted.

CONCLUSION

This case presents a question of exceptional importance-whether a litigant is entitle to relief from a Summary Judgment from the District Court for the Southern District of Florida and the United States Court of appeals for the Eleventh Circuit, in which the (Appeals Court) deliberately refuse to follow the applicable Supreme Court decisions in which the Court of Appeals has misconstrued, misapplied, misconceived and applicable Supreme Court cases. The Petitioner has been denied due process and will forever suffer without the consequences of a decision that my well have rendered without a incompetent Appeals Court. By granting the Petitioner petition for certiorari, however, this Court can correct the Eleventh decision, which defies this Court's longstanding holdings that a litigant has a due process right under the Motion for Summary Judgment. In so doing, this court can also grant certiorari that important role played by the district court judges as a trier and finder of fact.

Accordingly, the Petitioner prays that this Court vacate and remand for further proceedings after plenary consideration by this Court.

Respectfully submitted

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